

### REMARKS

An office action mailed November 25, 2002 is outstanding. On January 20, 2004, Applicants filed a Petition to Revive, together with a response to the November 25, 2002 office action. On April 28, 2004, the PTO mailed a communication indicating that the response filed January 20, 2004 failed to properly indicate text deleted from claims 59-61. That communication provided one month or 30 days to respond. Applicants responded on May 28, 2004. On December 7, 2004, the PTO mailed a further communication indicating that claim amendments still were not properly indicated. The undersigned apologizes for the error.

Applicants hereby present claims 59-61 properly showing amendments from the claim status at the time of the November 25, 2002 office action.

For the examiner's convenience, Applicants hereby repeat the remarks filed January 20, 2004 and May 28, 2004, inasmuch as those remarks have not been considered in view of the undersigned's failure to properly present the claim amendments.

Applicant expresses appreciation for the indication that claims 50 and 69 are allowable.

The remaining claims are rejected as anticipated by Cousens et al. U.S. 4,741,180 or obvious from a combination that includes Cousens. It now seems that the rejection based on Cousens has evolved into a single issue: whether two peptides disclosed in the Cousens priority application<sup>1</sup> (designated respectively pYPK12 and pYSL12) inherently possess the claimed properties. Applicants had argued that the Cousens peptides fail to include the two separate claim elements: a hinge region and cleavage site separate from the hinge region. In other words, according to the claims, the cleavage site is not part of the hinge region. Cousens has no disclosure of a peptide with both claimed features.

Applicants appreciate the statement at page 5, lines 3-8 of the Office Action indicating that,

Applicant urges that the two fusion protein[s] of Cousens et al. on which the instant rejection is based do not meet the limitation in the instant claims because the hinge region can not be part of the cleavage site. Claim 47 [said to be exemplary of the

---

<sup>1</sup> The Cousens priority application is the only application that pre-dates Applicants' priority application.

claimed subject matter]...requires the presence of a hinge region and a cleavage site in the claimed polypeptide, [but] it does not specify that these two features have to be structurally distinct elements. Emphasis is added.

In an effort to shorten prosecution of this case, which has already been extensive, applicants now amend both independent claims, claims 47 and 64, to specify that two claimed structural elements, a cleavage site and a hinge region, are separate and distinct elements, i.e., the cleavage site is not part of the hinge region. Accordingly, it is clear that the Cousens et al. fusion peptides do not meet the claim limitations specifying that the cleavage site is not part of the hinge region, and therefore they do not anticipate any of the claims.

The examiner's suggestion in this respect quoted above is appreciated.

Please apply any charges or credits (including any fees to support any extensions of time that are required to make this reply timely) to deposit account 06-1050.

Respectfully submitted,

Date: \_\_\_\_\_

January 7, 2005

John W. Freeman

John W. Freeman, Esq.  
Reg. No. 29,066

Fish & Richardson P.C.  
225 Franklin Street  
Boston, MA 02110-2804  
Telephone: (617) 542-5070  
Facsimile: (617) 542-8906